

A restriction requirement is proper only when one or both of the following conditions are met: (1) the inventions are independent or distinct; or (2) there is a serious burden on the examiner if restriction is not required.¹ Applicant respectfully requests reconsideration of the restriction requirement with respect to inventions of Group 1.

Any restriction requirement requires a showing as to why restriction is necessary.² If there is a serious burden on the examiner, the examiner should “show by appropriate explanation either separate classification, separate status in the art, or a different field of search.”³ The examiner has failed to do so.

Also, where “inventions are related as disclosed but are not distinct as claimed, restriction is never proper.”⁴ As the examiner is aware, restriction is NOT proper if the claimed inventions are NOT patentable (novel and unobvious) over each other.⁵ Unless the examiner is prepared to allow the invention of Group 1 over the invention of Group 2, if presented in a divisional application, the restriction should not be required.

The Commissioner is hereby authorized to charge any deficiency for the following fees associated with this communication or credit any overpayment to Deposit Account Number 502290: (1) Any filing fees under 37 CFR 1.16 for the presentation of extra claims; (2) Any patent application processing fees under 37 CFR 1.17.

¹ MPEP 803.

² MPEP 808.

³ MPEP 803.

⁴ MPEP 806.

⁵ MPEP 802.01.

Accordingly, Applicant respectfully requests that either the restriction requirement be withdrawn or that the examiner provide appropriate explanation for the restriction requirement.

Respectfully submitted,

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